IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3683 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LEGAL HEIRS OF DECEASED POPATKHIMA RAMANI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 3683 of 2002
MR DD VYAS with MR DL KOTHARI & MR UTPAL PANCHAL of M/S.VYAS ASSOCIATES for Petitioner No. 1-1/3
..... for Respondent No. 1-3
MR PM THAKKAR with MR NAVIN PAHWA and MR HM PRACHCHHAK for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/04/2002

ORAL JUDGEMENT

Rule. Mr HM Prachchhak, learned advocate waives service of Rule for respondent No. 4. Respondent Nos. 1 to 3 being quasi-judicial authorities, no notice is required to be issued to them. With the consent of the

learned counsel for the parties, the petition has been taken up for final disposal and is being disposed of by this judgment.

2. What is challenged in this petition under Article 226 of the Constitution is the judgment and order dated 28.3.2002 passed by the Principal Secretary, Revenue Department (Appeals) of the State Government dismissing the petitioners' revision application under Section 135 L(2) of the Bombay Land Revenue Code (the Code or the BLR Code for brevity) read with Rule 108(6A) of the Bombay Land Revenue Rules, 1921 (the Rules or the BLR Rules, for brevity).

3. The facts leading to filing of the petition are as under:-

3.1 The dispute between the parties is about land admeasuring Acres 4, 9 Gunthas in Survey No. 128 and land admeasuring Acres 4, 2 Gunthas in Survey No. 124 of the City of Rajkot. Both the parcels of land are hereinafter referred to as "the land" or "the land in question". The revenue record indicated that prior to the controversy, the land was mutated in the name of Ladha Ratna. Ladha Ratna expired on 25.4.1978. On 30.4.1978, an application was given by Popat Ladhabhai to the City Mamlatdar, Rajkot for mutating his name in the revenue record regarding the land in question. The land was mutated by entry No. 3635 in the name of Popat Ladhabhai and was certified by the Circle Officer, Rajkot on 7.6.1978.

3.2 On 22.9.1997, respondent No. 4 herein, Jivtiben Shivabhai Keralia, daughter of late Ladha Ratna filed an appeal under Rule 108(5) of the Bombay Land Revenue Rules before the Assistant Collector, Rajkot challenging the aforesaid entry No. 3635 and praying that the order made at entry No. 91 in the succession register on 7.6.1978, on the basis of which the above entry was made, be set aside and the appellant (i.e. respondent No. 4 herein) be declared as the owner of the land. The Assistant Collector dismissed the appeal by his judgment and order dated 13.10.1999/4.4.2000 (Annexure "D") on the ground that the appeal was time barred and that no sufficient and reasonable cause was shown for condoning the delay of 19 years. In the meantime, during pendency of appeal before the Assistant Collector, Popatbhai expired on 30.6.1999.

3.3 Thereafter on 20-9-2001, respondent No. 4 herein preferred an appeal before the Collector, Rajkot for

challenging the aforesaid order of the Assistant Collector. By judgment and order dated 27.11.2001 (Annexure "E"), the Collector, Rajkot allowed the appeal and held that Popat Ladha had claimed ownership over the land in question under a registered Will dated 18.12.1969 and a registered adoption deed dated 4.2.1972, but at the time of his adoption by Ladha Ratna, Popat Khima was aged 41 years. Therefore, the adoption was illegal in view of the provisions of Section 10(iv) of the Hindu Adoptions and Maintenance Act, 1956 which provides that the person to be adopted must not be more than 15 years of age. As regards the Will, the Collector observed that the land in question was obtained by Ladha Ratna at a partition and, therefore, it was an ancestral property. Only self acquired property could be bequeathed by a will. Popatbhai had not produced a probate from a competent Court of law alongwith the Will and, therefore, the Will could not be relied upon. According to the affidavit of respondent No. 4, she was the sole legal heir of Ladha Ratna being his daughter. Although she was alive and she had not given any release or waiver, entry No. 3635 was made without serving respondent No. 4 with a notice under Rule 135-D of the Bombay Land Revenue Rules. Hence, such an illegal entry could be set aside without any bar of limitation. The Collector accordingly directed the subordinate revenue authorities to cancel entry No. 3635 and to enter the name of respondent No. 4 in the record of rights for the land in question.

3.4 Aggrieved by the aforesaid order, the petitioners herein preferred a revision application before the State Government. The Principal Secretary, Revenue Department (Appeals) heard the parties and dismissed the appeal by his impugned judgment and order dated 28.3.2002 (Annexure "G") and confirmed the findings given by the Collector. Hence, the heirs of Popatbhai, the petitioners herein, have filed this petition challenging the orders of the Principal Secretary, Revenue Department (Appeals) and the Collector, Rajkot.

4. At the hearing of this petition, Mr DD Vyas, learned counsel for the petitioners has raised the following contentions :-

(i) The second appeal filed by respondent No.4 was not maintainable and, therefore, the Collector could not have set aside the order of the Assistant Collector in appeal. Both the order of the Collector and that of the Secretary must fall to the ground. Strong reliance is placed on the decisions of this Court in 2001 (3) GCD 1946, 37

(2) GLR 600 and 26 (1) GLR 139.

(ii) There was delay of 17 years in the appeal filed by respondent No. 4 before the Assistant Collector for challenging the entry certified on 7.6.1978. The Assistant Collector had, therefore, rightly dismissed the appeal as time barred. Moreover, there was also delay of almost 2 years in filing the appeal before the Collector for challenging the Assistant Collector's Order dated 20.10.1999. Hence, the Collector as well as the Principal Secretary erred in not dismissing the appeal before the Collector and in interfering with the entry made as far back as in 1978.

(iii) When a civil suit between the same parties in respect of the same dispute about the same land is pending and the interim orders passed in the said suit are in favour of the petitioners and against respondent No.4, the revenue authorities were simply required to follow those interim orders during pendency of the suit and thereafter to follow the final order in the suit on the question of title to the property. The Collector as well as the State Government in revision had no power or authority to decide the disputes about the title to the property. They were only required to consider the question of mutation entry for the limited fiscal purposes as to from whom the land revenue should be collected i.e. who is the person in possession of the land. Still, however, the Collector and the Principal Secretary adjudicated upon the disputes between the parties about the title to the property and, therefore, their orders are required to be set aside.

(iv) Assuming that the authorities had jurisdiction to decide such disputes, the orders passed by the authorities suffer from errors of law apparent on the face of the record. Popatbhai, the petitioners' father, was a nephew (brother's son) of Ratna Ladha. Popatbhai and his father Bhikhabhai were looking after Ratna Ladha for a number of decades as Ratna Ladha had no son and respondent No.4 was married and staying at her husband's place. Hence Ratna Ladha had executed the registered will as well as the registered adoption deed in 1969 and 1972 respectively long prior to his death in 1978. The finding that the

adoption was illegal was rendered without considering the law laid down by the Madhya Pradesh and the Bombay High Courts and later on by the Hon'ble Supreme Court in AIR 1991 SC 1180 taking the view that even if the person adopted is more than 15 years old, such adoption is permissible in view of the custom prevalent in this part of the country.

Similarly, as regards the question of Will, the Will was registered and was required to be acted upon without Popat Ladha or the petitioners obtaining any probate. The provisions of Section 213(2) read with section 57 of the Indian Succession Act, 1925 have not been considered by the authorities.

(v) Even though respondent No. 4 had not made any application before the Circle Officer or the Mamlatdar for entering her name in the revenue record, by the impugned order the Collector directed the Mamlatdar to mutate the name of respondent No. 4 in the revenue record relating to the land in question.

5. On the other hand, Mr PM Thakkar, learned counsel for respondent No. 4 has made the following submissions:-

(i) Under the provisions of Rule 108 of the Bombay Land Revenue Rules, against the order of the Assistant Collector/Deputy Collector under sub-rule (5), a revision lies before the Collector under sub-rule (6) and against such decision of the Collector, a further revision lies before the State Government under sub-rule (6A). Even if an appeal did not lie to the Collector, atleast a revision did lie and, therefore, the Collector's order dated 27.11.2001 may be treated as an order in revision and, therefore, no interference with the said order or with the order of the State Government in further revision is called for. Reliance is placed on the decisions in AIR 1971 SC 2039, AIR 1970 SC 1173, AIR 1964 SC 264 and AIR 1958 SC 232.

(ii) No time limit is prescribed for entertaining the revision before the Collector under sub-rule (6) or before the State Government under sub-rule (6A) of Rule 108. The order dated 7.6.1978 at entry No. 81 in the succession register

resulting into entry No. 3635 was not communicated to respondent No. 4. Hence, the question of delay did not arise. In any view of the matter, that entry was made pursuant to the application dated 30.4.1978 given by Popatbhai, son of Khima Ramani. In that application Popatbhai had made a false statement that deceased Ladha Ratna had no other heir except Popatbhai himself. The rojkam made in presence of the Talati-cum-Mantri and produced before the Additional Mamlatdar also contained a false statement that apart from Popatbhai, deceased Ladha Ratna had no other heir, although respondent No. 4 - the daughter and the only legal heir of deceased Ladha Ratna was alive. Before making this entry, respondent No. 4 was not served with any notice under Rule 135-D of the Rules and, therefore, such entry obtained by fraud and misrepresentation of facts can be set aside at any stage and in any proceedings.

(iii) The Collector and the Principal Secretary in revision accepted the case of respondent No. 4 that being the daughter of deceased Ladha Ratna, she was entitled to have her name mutated in the revenue record relating to the land in question, but it was the petitioners, as the heirs of Popatbhai who pleaded the defence that Popatbhai had obtained title to the land in question by virtue of the registered Will dated 18.12.1969 ad the registered adoption deed dated 4.12.1972. Hence, the Collector and the Principal Secretary dealt with those two defences on merits. Hence, the Collector and the Principal Secretary were well within their powers in giving the findings because the petitioners invited the said authorities to consider the petitioners' defences which were required to be dealt with.

(iv) The findings given by the Collector and confirmed by the Principal Secretary are justified on merits also, but it is not necessary for this Court in the present proceedings to go into the merits of those findings for the simple reason that such disputes are to be decided by the Civil Court and the findings given by the authorities in such RTS proceedings for the limited purpose of making entries in the revenue record do not confer any title to the property. Regular Civil Suit No. 892 of 1998 is already pending in the Court of the learned Civil Judge (Senior

Division), Rajkot and, therefore, the mutation entries to be made as per the impugned orders will abide by the outcome of the said Civil Suit.

(v) When the Collector and the Principal Secretary found that entry No. 3635 made in favour of Popatbhai Ladha was required to be cancelled, the said authorities were justified in directing that respondent No. 4 being the only issue of deceased Ladha Ratna was entitled to have her name entered in the revenue record relating to the land in question.

CONTENTION (i)

6. As regards the first contention regarding non-maintainability of the appeal before the Collector, it is true that once the Assistant Collector dismissed the appeal against entry No. 3635, a second appeal did not lie in view of the provisions of sub-rule (5) of Rule 108 of the Bombay Land Revenue Rules, 1921. However, it appears that the decisions cited by Mr Vyas for the petitioners were rendered in the context of unamended Rule 108. The relevant portions of Section 135-L(2) of the Code read with amended Rule 108 are required to be set out for appreciating the controversy in the correct perspective.

"Sec.135-L(2) Appeal.- The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof received, by such Revenue Officers and in such manner and to such extent and subject to such appeal as the State Government may from time to time by rules prescribed in this behalf.

Rule 108.(1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar,... ... ...

(2) to (4) ... ...

(5) An appeal against an order under this rule shall, if the order has been made by the ... ... or a revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or to an officer appointed by the Collector in this behalf and if the order

has been made by .... by a revenue officer of a rank not lower than that of a Deputy Collector, to the Collector; such appeal shall be presented within sixty days from the date on which the copy of the order was served on the appellant or was otherwise intimated to him.

Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period.

Subject to the provisions of sub-rules (6) and (6-a) the decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

(6) The Collector may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If, in any case, it shall appear to the Collector that any proceeding so called for or any decision or order made in such proceedings should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

(6-A) The State Government may call for and examine record of proceedings in respect of any order passed by the Collector under sub-rule (5) or sub-rule (6) for the purpose of satisfying itself as to its regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings. If in any case, it appears to the State Government that any proceedings so called for or any decision or order made in such proceedings should be modified annulled or reversed it may pass such order thereon as it deems fit."

7. In view of the aforesaid provisions, once an appeal was preferred before the Assistant Collector against the order of the Circle Officer certifying the

entry and such appeal was dismissed by the Assistant Collector, a second appeal did not lie to the Collector, but sub-rule (6) does provide for a revision and empowers the Collector to call for and examine the record of any enquiry or proceeding of any subordinate revenue officer under sub-rule (5) of Rule 108 for the purpose of satisfying himself as to the regularity or propriety of any decision or order passed in such proceedings. In view of this provision and the wide language of sub-rule (6) conferring the revisional power on the Collector in terms wider than the revisional power under Section 115 of the Code of Civil Procedure, this Court is of the view that the judgment and order passed by the Collector in appeal can certainly be treated as the judgment and order in a revision application under sub-rule (6) of Rule 108. In Muman Habib Nasir Khanji vs. State of Gujarat, 11 GLR 307, a Division Bench of this Court took the same view that the order passed by the State Government in a purported appeal under Rule 108 of the BLR rules should be treated as an order in revision which was held to be maintainable.

CONTENTION (ii)

8. As regards the contention that since the appeal was required to be filed within 60 days, the Assistant Collector had rightly rejected the appeal filed after 17 years and that the Collector ought not to have exercised the power for interfering with the entry certified as far back as on 7.6.1978, the contention may prima facie appear to be attractive. However, sub-rule (5) prescribing the limitation period of 60 days from the date of service of the order of the first authority also confers the power of condonationof delay for sufficient cause. Apart from the fact that the order of the Assistant Collector does not mention the date of service, if any, of the order on respondent No. 4, the contents of the application dated 30.4.1978 (signed by Popat Ladha but writtn by some other person) and the Rojkam made before the Taluati-cum-Mantri on the same day indicates that a misrepresentation was made that deceased Ladha Ratna had no daughter and that Popat Ladha was the only son, heir and descendant of the deceased. Even the notice required to be sent under Rule 135-D of the Bombay Land Revenue Rules was not sent to respondent No. 4, the only issue of deceased Ladha Ratna. When the Collector considered this set of circumstances as a sufficient cause for condoning the delay and the State Government in revision confirmed this finding, this Court would be loathe to interfere with this concurrent finding in exercise of its extraordinary discretionary jurisdiction

under Article 226 of the Constitution.

9. Mr Vyas for the petitioenrs, however, contended that even where no period of limitation is prescribed, the Courts have evolved the principle that any statutory power must be exercised within reasonable time. The period of 17 years cannot be said to be reasonable period, when the land in question has been divided into plots and most of them have been sold or constructions have been put up thereon.

10. There are two answers to this submission. In the first place, the principle laid down by the Apex Court in State of Orissa vs. Brundaban Sharma, 1995 Supp (3) SCC 249 and explained by this Court in Jiviben Kalaji Bapuji vs. State of Gujarat, 1998(2) GLH 556 is that though the general rule is that a statutory power unfettered by any time limit must be exercised within reasonable time, the defence that exercise of a statutory power beyond reasonable period must be held to be illegal is not available to a person who himself is guilty of fraud or suppression of material facts in respect of a matter which is relevant to the certification of an entry in the revenue record. This principle has also been reiterated by a Division Bench of this Court in Gujarat Khet Kamdar Union vs. State of Gujarat, 1999(3) GLR 2044 (2056). In view of the admitted position that respondent No. 4 is the daughter of deceased Ladha Ratna and that Popatbhai has not relied on the adoption and the will in his favour inthe application dated 30.4.1978 (on the basis of which Etnry No. 3635 was made), Popatbhai was required to state this fact before the authorities while applying for mutating his name in the revenue record as the sole heir of deceased Ladha Ratna. Secondly, even while interfering with Entry No. 3635, it is possible to direct the subordinate revenue authorities not to interfere with the transations in the intervening period, so that the delay on the part of respondent No. 4 causes no prejudice to the other parties. Hence, the orders of the Collector and the Principal Secretary interfering with entry No. 3635 made on the basis of the application dated 30.4.1978 cannot be faulted with on the ground that the power has been exercised beyond reasonable period.

11. Coming to the question of delay in filing the appeal (treated as revision as per the present judgment) before the Collector, the Assistant Collector dismissed the appeal by his order dated 13.10.1999/4.4.2000 and respondent No. 4 preferred the appeal before the Collector on 20.9.2001 i.e. after a delay of more than a year and five months. According to the petitioners, the

order of the Assistant Collector was pronounced in the presence of the learned advocate for respondent No. 4 who was the appellant before the Assistant Collector and, therefore, respondent No. 4 must be deemed to have known about the pronouncement of the order of the Assistant Collector on 13.10.1999 and, therefore, there was no sufficient cause shown for the delay in filing the appeal/revision before the Collector.

On the other hand, it is the case of respondent No. 4 that the learned advocate who had appeared on her behalf before the Assistant Collector did not inform her about the outcome of the appeal.

12. When sub-rule (6) of Rule 108 does not prescribe any period of limitation for revision before the Collector and when the Collector condoned the delay on the aforesaid ground and entertained the appeal/revision on merits and the Principal Secretary of the State Government also confirmed that order, at this stage this Court woul not upset the orders on the ground of delay in filing the appeal (now treated as revision) before the Collector.

The explanation given by respondent No. 4 might not have been accepted by an authority considering such explanation for the first time, but when the same has been accepted by the Collector and the appeal is entertained on merits and that decision has also been confirmed by the State Government in revision, this Court is not inclined to exercise extraordinary writ jurisdiction under Article 226 of the Constitution for upsetting that decision of the Collector to condone the delay in filing the appeal/revision.

CONTENTION (iii)

13. The learned counsel for the parties have strenuously argued about the scope of the power of the revenue authorities in deciding the question of title to the property. Mr Vyas, learned counsel for the petitioners has heavily relied on the following decisions in support of his contention that the revenue authorities cannot decide the disputed questions of title to the property and they have to merely go by the documents produced before them :-

(i) State of Gujarat vs. Patel Raghav Natha,
AIR 1969 SC 1297;

(ii) Janardan D Patel vs. State of Gujarat, 36(1) GLR 50;

(iii) Ratilal Chunilal Solanki vs. Shantilal Chunilal Solanki, 1996(2) GLR 525;

(iv) Siddharthbhai B Shah vs. State of Gujarat, 1999(3) GLR 2527.

14. On the other hand, Mr PM Thakkar, learned counsel for respondent No. 4 has relied on the following decisions in support of his contention that whatever may be decisions given by the revenue authorities in respect of mutation entries, this Court would not entertain any contentions on merits and the Court would relegate the parties to the remedy of a Civil Suit :-

(i) Durgadas vs. Collector, (1996) 5 SCC 618;

(ii) The orders dated 3.3.1999, 11.12.1998 and 4.3.1998 passed by this Court in Special Civil Application Nos.8556/98, 9183/98 and 1122/98.

15. Before dealing with the aforesaid decisions, it is necessary to make a brief reference to the statutory provisions having a bearing on the controversy involved in this petition which pertains to what is popularly known as RTS proceedings.

Chapter X-A of the Bombay Land Revenue Code, 1879 provides for the record of rights. Sub-section (1) of Section 135-B reads as under :-

"135-B. The record of rights - (1) A record of rights shall be maintained in every village and such record shall include the following particulars :-

(a) the names of all persons other than tenants who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof;

(b) the nature of extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto;

(c) the rent or revenue (if any) payable by or to any of such persons;

(d) such other particulars as the State Government may prescribe by rules made in this behalf."

Sub-section (2) thereof pertaining to tenancy is not relevant for the present purposes.

Section 135-C with the title "Acquisition of rights to be reported" provides that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land ... ... shall report in writing his acquisition of such right to the village accountant within three months from the date of such acquisition. The second proviso to Section 135-C reads as under :-

"Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the village accoutant."
(emphasis supplied)

Section 135-D provides for register of mutations and register of disputed cases which reads as under :-

"135-D. Register of mutations and register of disputed cases - (1) The village Accountant shall enter in a register of mutation every report made to him under S. 135C or any intimation of acquisition or transfer of any right of the kind mentioned in Section 135C received from the Mamlatdar or a Court of Law.

(2) Whenever a village accountant makes an entry in the register of mutations he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

(3) Should any objection to any entry made under sub-section (1) in the register of mutations be made in writing to the village accountant, it shall be the duty of the village accountant to enter the particulars of the objection in a register of disputed cases and to

give a written acknowledgment of the receipt of such objection to the person making it.

(4) Orders disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by such officers and in such manner as may be prescribed by rules made by the State Government in this behalf.

(5) The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf :

Provided that an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in register of mutations how to be certified.- Entries in the register of mutations shall be tested and if found correct or after correction, as the case may be, shall be certified by a revenue officer of rank not lower than than of a Mamlatdar's first Karkun."

The Rules contemplated are the BLR Rules, particulars Rule 108, the relevant portion of which reads as under :-

"Rule 108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar ... ...

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The Officer making the enquiry shall record his order disposing of the dispute in the said register and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the Diary of mutations to be correct."

(5) to (6A) = quoted in para 6 above.

Section 135-E provides that on the requisition of any revenue officer or village accountant, any person

whose rights, interests or liabilities are required to be or have been entered in any record of register shall be bound to furnish information or documents needed for the correct compilation or revision of the record.

Section 135-J provides that an entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Section 135-L reads as under :-

"135-L. Bar of Suit and exclusion of Chapter XIII. (1) No suit shall lie against the Government or any officer of Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter, or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this Chapter.

(2) Appeal.- The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof received, by such Revenue officers and in such manner and to such extent and subject to such appeal as the State Government may from time to time by rules prescribed in this behalf."

Rule 108 of the Bombay Land Revenue Rules quoted in para 6 hereinabove and in this para is thus traceable to the provisions of Section 135-D and sub-section (2) of Section 135-L.

16. In Janardan D Patel vs. State of Gujarat, 36 (1) GLR 50, this Court considered the scheme of the aforesaid provisions and held that the revenue authorities exercising powers with respect to RTS proceedings are invested with limited powers. They cannot assume to themselves certain powers not conferred on them by law nor can assume jurisdiction not conferred on it by law and that in that view of the matter, it has no power to decide the validity of a transaction on the touchstone of a statutory provision occurring in some other enactment. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the other Act for its

decision. The necessary mutation entry may be made only after the decision of that authority under the other Act is received. It would, however not be open to the revenue authorities in RTS proceedings to decide that question.

17. In State of Gujarat vs. Patel Raghav Natha, AIR 1969 SC 1297, the Apex Court has made the following observations in para 14 of the judgment :-

> "14. We are also of the opinion that the Commissioner (exercising the revisional power under Section 211 of the Bombay Land Revenue Code) should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant."

In Evergreen Apartment Co-op. Housing Society vs. Special Secretary, Revenue Department, 1991(1) GLR 113, a learned Single Judge of this Court has held that in the proceedings under Rule 108 of the Bombay Land Revenue Rules, the revenue authorities cannot independently pass orders of cancelling the entries on an assumption that the transactions recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed.

In Ratilal Chunilal Solanki vs. Shantilal Chunilal Solanki, 1996 (2) GLR 525, this Court again examined this issue and laid down as under :-

> "It cannot be gainsaid that, when a dispute as to the title to the properties mentioned in the revenue records arises, the parties have to go to the competent Civil Court for resolution of their such dispute. They cannot convert the mutation proceedings under Chapter 8A of the Code into a battle-field for the purpose. The revenue authorities are incompetent to decide the disputed question of title to any property mentioned in any revenue record."

(emphasis supplied)

18. There is no dispute about the fact that Regular Civil Suit No. 892 of 1998 is already pending in the Court of the learned Civil Judge (SD), Rajkot between the parties with respect to the same land which is the subject matter of the present petition. The petitioenrs' submission is that since the plaintiff in that suit (i.e. respondent No. 4 herein) had also prayed for interim injunction and the trial Court had by order dated 9.10.1997 refused it and the District Court confirmed that order by its order dated 10.12.1998, the revenue authorities ought to have followed that interim order because even the interim orders of the Civil Court are subject to the principle of res judicata (vide Arjun Singh vs. Mohindra Kumar, AIR 1964 SC 993).

On the other hand, Mr PM Thakkar for respondent No. 4 has submitted that although the same land is the subject of that suit, in the interim order in that suit the Civil Court has merely dealt with the question of possession of the land in question and held that it is with the present petitioners i.e. the defendants in that suit, but the Civil Court has not dealt with the question of legality and validity of the entry in the revenue record.

19. Having heard the learned counsel for the parties, this Court is of the view that as far as the limited question of legality or validity of entry No. 3635 is concerned, in view of the provisions of sub-section (1) of Section 135-L of the Bombay Land Revenue Code, the suit for challenging the mutation entry in the record of rights is not maintainable. At the same time, as per the settled legal position, the revenue authorities are bound to give effect to the decision of the Civil Court on a dispute about title to the land.

Two of the issues raised in the said suit are as under :-

"(2) Whether the plaintiff proves that the suit property is inherited by her from her deceased father Ladha Ratna as his only heir ?

(4) Whether the defendants prove that in view of registered will, registered adoption deed, registered partition deed, alleged possession and alleged cultivation by the plaintiff of the suit land is not admissible in evidence under Sec. 91 and Sec. 92 of Indian Evidence Act ?"

It is, therefore, clear that the aforesaid issues are very much pending before the Civil Court. The matter involves serious disputes about the title to the property and, therefore, in view of the aforesaid decisions of this Court, the Collector and the Principal Secretary, Revenue Department (Appeals) were not required to convert the RTS proceedings into a battle field about title to the land in question.

20. Mr Thakkar has, however, submitted that when the petitioners themselves put forward the adoption deed and,the will and the Collector and the Principal Secretary have found the issues so apparent and covered by the relevant statutory provisions of the Hindu Adoptions and Maintenance Act, 1956 and the Indian Successions Act, 1925, there was nothing wrong with those authorities taking one view or the other and holding that respondent No. 4 was entitled to have her name entered in the record of rights. Ultimately that finding is subject to the outcome of the civil suit between the parties and, therefore, in view of the aforesaid three decisions of this Court, in a petition under Article 226, this Court need not go into the contentions raised on behalf of the the petitioners.

21. The submission of Mr Vyas for the petitioner on the other hand is that once the Collector and the Principal Secretary took the view that the entry in favour of Popat Ladha was required to be quashed, that did not automatically mean that respondent No. 4 was entitled to have her name entered in the record of rights. It is submitted that in view of the registered Will as well as the registered adoption deed relied upon by the petitioners, the Collector and the Government hearing the revision applications were not required to usurp the function of the Civil Court nor can revision proceedings be used for leading of evidence in those proceedings. Reliance has been placed on the decision of a Division Bench of this Court in Muman Habib Nasir Khanji vs. State of Gujarat, 11 GLR 307.

22. In the said decision, a Division Bench of this Court has held that whereas the appellate authority has the power of annulling, reversing, modifying and confirming the decision or order of the subordinate officer and the appellate authority has also the power to direct the subordinate officer to make further investigation into the matter and/or to take additional evidence, but the revisional authority has to confine itself to the record and proceedings of the case when it

examines the legality or the propriety of the decision of the Collector or of the Prant Officer. In other words, the revisional authority can annul the decision and remand the matter, but is not to permit fresh evidence being led before it.

23. In the instant case, however, when the petitioners relied upon the registered will and registered adoption deed, the revisional authorities went into the question of legality of those registered documents. Apropos the question whether the adoption was in violation of the provisions of Section 10(iv) of the Hindu Adoptions and Maintenance Act, 1956, the defence of the petitioners was that it was permissible under the custom to adopt a person about 15 years of age and in support of that contention, reliance was placed on the decision dated 5.12.1974 of the Bombay High Court (1976 Hindu Law Reporter 308) and the decision dated 20.2.1976 of the Madhya Pradesh High Court (1976 Hindu Law Report 661). The Principal Secretary has observed in his order that on the question whether such a custom or usage was prevalent amongst the petitioners or not; adequate evidence was not led. Reliance is placed by the petitioners on the decision of the Hon'ble Supreme Court in Kandiba Rama Papal vs. Narayan, AIR 1991 SC 1180 laying down that where custom in the Bombay State permitting adoption of a person at any age is judicially recognized, proof of custom is not necessary in subsequent cases. This decision, therefore, more than justifies the caution to be administered to the revenue authorities to follow the principle that they are not to decide seriously disputed questions about title to the property. Hence, the question whether the revisional authority had power to require additional evidence being led pales into insignificance.

24. Similarly, on the question of registered Will, the Collector and the Principal Secretary took the view that since the property was ancestral, deceased Ladha Ratna could not have bequeathed his property by a Will, as only self acquired can be bequeathed under a Will.

The question about the nature of the property in the hands of Ladha Ratna at the time of his death on 25.4.1978, the question whether the deceased had or did not have right to bequeath the property under a Will, the question whether the nature of such property would be ancestral only in the hands of a male co-parcener joining the family subsequently, these are all complex questions of law that did not admit of simple answeres which the Collector and the Principal Secretary presumed so easily.

These questions were, therefore, required to be left to the Civil Court, more particularly when the civil suit between the parties ont he same subject matter is very much pending.

25. Further as regards the registered will, the Collector and the Secretary have taken the view that since the petitioners did not obtain any probate from a Court of competent jurisdiction, the same cannot be relied upon for claiming any right to the land in question. The said proposition is also sought to be supported on behalf of respondent No. 4 by referring to the provisions of sub-section (1) of Section 213 which provides that - No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will udner which the right is claimed, or has granted letters of adminsitration with the will or with a copy of an unauthentic copy of the will annexed.

Mr Vyas, however, submits that sub-section (2) of Section 213 read with clauses (a) and (b) of Section 57 of the Succession Act are not considered by the authorities. As per the said provisions, sub-section (1) of Section 213 will apply only to wills and codicils made by a Hindu, Buddhist, Sikh or Jain within the local limits of the city of Bombay, Madras and within the province of West Bengal and to wills and codicils relating to immoveable property within the aforesaid territories. Since the properties are in Rajkot, and the will was also made and registered at Rajkot, the provisions of sub-section (1) of Section 213 are not applicable to the land in question.

26. There is considerable substance in the submission of Mr Vyas for the petitioners. But since the Court is taking the view that the disputes of this nature are required to be decided by the competent Civil Court, the Court does not decide such rival contentions in this petition arising from the RTS proceedings, but the above arguments are referred to for highlighting the fact that the issues which the Collector and the Principal Secretary treated as questions with simple and obvious answers may not be so simple and obvious and, therefore, the Courts have consistently laid down the law that the revenue authorities are not to decide the questions about title to the property and that in case of any such serious controversy, the parties be directed to obtain a verdict from the Civil Court.

27. In view of the above, it appears to the Court

that while the Collector and the Principal Secretary were justified in deleting entry No. 3635 made in favour of Popat Ladha because that entry was made on the basis of an application in which Popat Ladha had made a claim that he was the sole heir of deceased Ladha Ratna and that application was not made on the basis of the registered Will or the registered adoption deed, the moment it was found that the contents of that application constituted a misrepresentation, deletion of that entry was justified, but the next question whether respondent No. 4 was entitled to have her name entered in the record was not required to be decided by the authorities for two reasons. In the first place, the second proviso to Section 135-C of the Bombay Land Revenue Code provides that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the village accoutant. Hence, the person claiming ownership over the land can assert his ownership even without getting his name entered in the revenue records. Hence, the Collector and the State Government in revision in the RTS proceedings had no power to direct that the claim of respondent No. 4 shall override those registered documents. Secondly, this was not the case where respondent No. 4 had gone to the village accountant within the prescribed period of three months or even within reasonable time for getting her name mutated in the record record. A period of more than 20 years had also rolled by, during which period i.e. between 1978 and 1997, respondent No. 4 did not come forward with any application for getting her name mutated and it was for the first time in 1997 that respondent No. 4 challenged the entry made in favour of Popat Ladha i.e. father of the petitioners. In this set of circumstances, the Collector and the Principal Secretary ought to have left the parties to make their applications for mutation in the revenue record before the authority under Section 135-C of the Bombay Land Revenue Code and thereafter it was for the revenue authorities to await the decision of the Civil Suit as per the law laid down by this Court.

28. It is also required to be noted that the revenue record consists of various forms. Village Form No. 6 pertains to the entries about ownership of the land in question, while Village Form No. 7/12 pertains to possession and cultivation of the land in question. The decisions relied upon by the learned counsel for respondent No. 4 would definitely apply as far as the entries in Village Form No. 7/12 are concerned because it is the person in possession of the land who is required to pay land revenue to the Government and, therefore, the Government is required to record that

information for fiscal purposes. Hence, while considering the application for mutation entry for this purpose in village form no.7/12, the revenue authorities will have to consider the finding of the Civil Court on this issue in the interim order dated 9.10.1997 of the Civil Court, Rajkot below Exh. 5 in Regular Civil Suirt No. 892 of 1998 as confirmed by the order dated 10.2.1998 of the District Court in Civil Misc. Appeal No. 11 of 1998 that the petitioners are in possession of the land in question.

In Arjun Singh vs. Mohindra kumar, AIR 1964 SC 993, the Supreme Court has held in terms that scope of the principle of res judicata is not confined to what is contained in Section 11, CPC but is of more general application. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits.

When the revenue authorities in the RTS proceedings are bound to follow the decision of the Civil Court regarding the title to the property, they would also be bound by the interim finding of the Civil Court that it is the present petitioners (defendants in the suit) and not respondent No.4 herein (plaintiff in the suit), who are in possession of the land in question.

29. Mr Vyas has submitted that since respondent No. 4 had slept over her rights for a period of 17 years for challenging entry No. 3635 in the appeal before the Assistant Collector, and had not asserted any claim to the property before filing the civil suit in the year 1997, not only the petitioners but even others will suffer grave prejudice if the orders of the Collector and the Principal Secretary are not set aside in their entirety. The said orders are required to be set aside on the ground that they ought not to have exercised powers after a gross delay of more than 17 years. It is submitted that in the meantime the land in question has been sub-divided into plots and sold and construction has also come up on some of those plots which fact is corroborated by the rojkam in the Civil Suit made on 23.10.1997.

30. It is true that this would be a valid defence oridinarily available to the person in whose favour the entry is made and the revenue authorities would, therefore, have been expected not to interfere with the entry certified on 7.6.1978. However, as indicated earlier, the entry was not made on the basis of the registered will or the registered adoption deed but on

the basis of a mere statement in the application dated 30.4.1978 that Popat Ladha was the sole issue and heir of Ladha Ratna. No reference was made to respondent No. 4 Jivtiben Shivabhai Keralia who was the daughter of the deceased. Hence, the delay would not come in the way of the entry being set aside when it was made on the basis of such an application dated 30.4.1978 which did not set out all relevant facts and it contained a misstatement and suppression of material fact about respondent No. 4 being the daughter of the deceased. At the same time, when the Court has found substance in the contentions urged on behalf of the petitioners that the second part of the order of the Collector (as confirmed by the Principal Secretary) requiring the subordinate authorities to mutate the name of respondent No. 4 in the revenue record relating to the land in question is required to be set aside and the parties may make application/s before the appropriate authority and such revenue authorities are required to await the verdit of the civil Court, it would be just and proper to direct that while the subordinate revenue authorities shall delete entry No. 3635 made in favour of Popat Ladha, all the subsequent entries in respect of portions of the land in question shall not be cancelled because the purchasers of those portions of the properties are not to be prejudicially affected at this stage till the final outcome of the Civil Suit.

O R D E R S

31. In view of the above discussion, the folowing order is passed :-

I The petition is dismissed in so far as the petitioners have challenged the first part of the orders of the Collector and the Principal Secretary setting aside entry No. 3635. However, the revenue authorities shall not delete or cancel other subsequent entries regarding sale of portions of the land described hereinafter, until the final outcome of Civil Suit No. 892 of 1998 pending before the Civil Court at Rajkot.

II However, the petition is allowed in so far as the petitioners have challenged the second part of the orders of the Collector and the Principal Secretary by which the subordinate revenue authorities are directed to take steps for mutating the name of respondent No. 4 as the

owner of the land in question. That part of the orders of both the authorities is set aside.

III It is clarified that as and when any party makes, or more than one party make, application/s for mutating their names in Village Form No. 6 for the land in question (land admeasuring Acres 4, 9 Gunthas in Survey No. 128 and land admeasuring Acres 4, 2 Gunthas in Survey No. 124 of the City of Rajkot), the revenue authorities shall await the outcome of Regular Civil Suit No. 892 of 1998 pending in the Civil Court at Rajkot and on receiving such verdict, the entries shall be made on the basis of the decision of the Civil Court.

IV As far as the entries in village Form No. 7/12 are concerned, the parties in possession i.e. the petitioners or the persons claiming through Popat Ladha or through the petitioners may make application/s to the competent authority for entering the name in such village Form No. 7/12 and the revenue authorities shall consider the same in accordance with law and on the basis of the interim order dated 9-10-1997 of the Civil Court, Rajkot in Regular Civil Suit No. 892 of 1998 as confirmed by the appellate order dated 10-12-1998 in Civil Misc. Appeal No.11 of 1998 for the limited purpose of mutation of the entries in village Form No. 7/12 for payment of land revenue.

V It will also be open to either of the parties in Regular Civil Suit No. 892 of 1998 to request the Civil Court, Rajkot to hear and decide the suit expeditiously.

32. The petition is accordingly partly allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent only with no order as to costs.

The ad-int. relief dt. 18.4.2002 is hereby vacated.

(M.S. Shah, J.)

sundar/-